

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 21066 of 2007(G)

PETITIONER:

**MALAYALAM INDUSTRIES LTD;
A COMPANY REGISTERED WITH THE REGISTRAR OF
COMPANIES, HAVING ITS REGISTERED OFFICE AT
MERMAID COMPLEX, KANIYAMPUZHA ROAD, VYTTILA,
COCHIN-682 019. REPRESENTED BY ITS MANAGING
DIRECTOR-THOMAS GEORGE.**

BY ADV. SRI.N.SUBRAMANIAM

RESPONDENT:

**THE STATE OF KERALA REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT, PUBLIC WORKS
DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.BENJAMIN PAUL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE LEASE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE RESPONDENT.

EXT.P2: TRUE COPY OF LETTER ISSUED BY THE PETITIONER AND ITS REPLY BY THE GOVERNMENT.

EXT.P3: TRUE COPY OF COVERING LETTER ISSUED BY THE GOVERNMENT ALONG WITH QUESTIONS AND RESPONSES.

EXT.P4: TRUE COPY OF LETTER ISSUED BY THE EXECUTIVE ENGINEER, PWD, IDUKKI.

EXT.P5: TRUE COPY OF LETTER ISSUED BY THE PETITIONER.

EXT.P6: TRUE COPY OF LETTER ISSUED BY THE PETITIONER.

EXT.P7: TRUE COPY OF LETTER ISSUED BY THE PETITIONER.

EXT.P8: TRUE COPY OF LETTER ISSUED BY THE GOVERNMENT.

EXT.P9: TRUE COPY OF LETTER ISSUED BY THE GOVERNMENT.

EXT.P10: TRUE COPY OF LETTER ISSUED BY THE PETITIONER.

EXT.P11: TRUE COPY OF LETTER ISSUED BY THE SUPERINTENDING ENGINEER, PWD.

EXT.P12: TRUE COPY OF LETTER ISSUED BY THE GOVERNMENT.

EXT.P13: TRUE COPY OF LETTER ISSUED BY THE PETITIONER.

EXT.P14: TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE MUNNAR GRAMA PANCHAYATH.

EXHIBITS OF R1

EXT.R1(a): TRUE COPY OF DETAILS OF PAYMENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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W.P.(C) NO. 21066 OF 2007
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Dated this the 11th day of September, 2007

J U D G M E N T

Ext.P1 is a concession agreement between the petitioner and the Government, in terms of which, the PWD Rest House at Munnar was entrusted to the petitioner for a period of thirty years. Apparently, there were some disputes between the parties and there was default also, which led to the issuance of Ext.P9 threatening to invoke the termination clause in Ext.P1. Even thereafter, communications were exchanged between the parties and finally by Ext.P12, the concession agreement was terminated. It is challenging Ext.P12 and seeking consequential reliefs, this writ petition has been filed.

2. Both parties make allegations against each other referring to the defaults of either side. However, a resolution of such disputed factual issues is not possible in a

proceedings under Article 226 of the Constitution of India.

3. It is seen that Clause 10.2 of Ext.P1 concession agreement provides for resolution of disputes by arbitration in terms of the Arbitration and Conciliation Act, 1996. Since an alternate remedy for resolution of disputes is incorporated in the agreement itself, the rights of the parties are to be governed by the terms of the agreement, viz, by taking recourse to the Arbitration proceedings.

4. Therefore, this writ petition is disposed of relegating the petitioner to seek his remedy in arbitration proceedings, in terms of Clause 10.2 of Ext.P1.

5. At the time of admission of this writ petition, this court had passed an interim order restraining the respondents from taking over the Rest House. The order has been extended thereafter periodically, and presently the petitioner is in possession of the Rest House. Petitioner apprehends that, if safeguard is not provided for, the Rest

House will be taken over from him, causing him heavy loss. To prevent miscarriage of justice, I direct that further proceedings pursuant to Ext.P12 be kept in abeyance for a further period of two weeks from today, as in the meanwhile, it will be open to the petitioner to obtain appropriate orders in appropriate proceedings .

With the above direction, the writ petition is disposed of.

ANTONY DOMINIC, JUDGE.

Rp